



July 2, 1999

Mr. Mario Gutierrez  
Assistant City Attorney  
City of San Marcos  
City Hall  
630 East Hopkins  
San Marcos, Texas 78666

OR99-1857

Dear Mr. Gutierrez:

You have asked whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 125545.

The City of San Marcos (the "city") received an open records request for the name and address of the party or parties who delivered the requestor's cat to the city's Animal Shelter. You have submitted to this office for review a document containing the requested information, which you contend is excepted from required public disclosure pursuant to section 552.101 of the Government Code in conjunction with the informer's privilege. We have considered the exception and arguments you raise and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Texas courts long have recognized the informer's privilege, *see Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928), and it is a well-established exception under the Public Information Act. Open Records Decision No. 549 at 4 (1990). For information to come under the protection of the informer's privilege, the information must relate to a violation of a civil or criminal statute. *See* Open Records Decision Nos. 515 at 2-5 (1988), 391 (1983). When information does not describe conduct that violates the law, the informer's privilege does not apply. Open Records Decision Nos. 515 (1988), 191 (1978).

The "informer's privilege" aspect of section 552.101 protects the identity of persons who report violations of the law. Although the privilege ordinarily applies to the efforts of law enforcement agencies, it can apply to administrative officials with a duty of enforcing particular laws. Attorney General Opinion MW-575 (1982); Open Records Decision

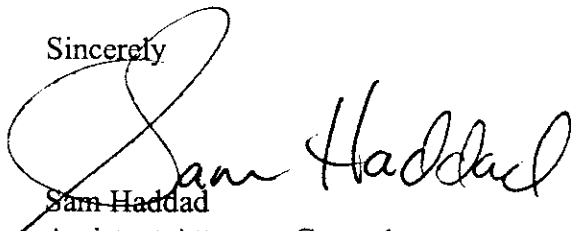
Nos. 285 (1981), 279 (1981); *see also* Open Records Decision No. 208 (1978). This may include enforcement of quasi-criminal civil laws. Open Records Decision Nos. 515 (1988), 391 (1983).

The privilege excepts the informer's statement itself only to the extent necessary to protect the informer's identity. Open Records Decision No. 549 at 5 (1990). The privilege does not, however, protect the contents of communications if they do not reveal the identity of the informant. *Roviaro v. United States*, 353 U.S. 53, 60 (1957). Because part of the purpose of the privilege is to prevent retaliation against informants, the privilege does not apply when the informant's identity is known to the individual who is the subject of the complaint. *See* Open Records Decision No. 208 (1978); *see also* Tex. R. Civ. Evid. 508. This office has previously concluded that the identity of an individual who files an animal-related complaint with the county is protected under the informer's privilege. *See* Open Records Decision No. 156 (1977) (name of person who makes complaint about another individual to city's animal control division is excepted from disclosure by informer's privilege so long as information furnished discloses potential violation of state law); Open Records Letter No. 96-0648 (1996).

In this instance, you state that "[u]nder the San Marcos City Code, Animal Control Officers may impound any animal found running at large in the city." You further assert that "[i]t is the City's position that by turning in [the requestor's] cat to the City Animal Shelter, the person was at the time reporting a violation of the law or a possible violation of the law." We have marked in brackets the information that reveals or might tend to reveal the identity of the informant and therefore may be withheld pursuant to section 552.101. Since the requested "name and address" of the party who reported the violation may be withheld under the informer's privilege, the remaining information in the complaint is not responsive. However, the city may release the remaining information to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

  
Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/nc

Ref.: ID# 125545

Encl.: Submitted documents

cc: John and Amy Beck  
114 Chaparral  
San Marcos, Texas 78666  
(w/o enclosures)